

**March 2012**

# **DEFENSE CONTRACTING**

## **Competition for Services and Recent Initiatives to Increase Competitive Procurements**



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## Why GAO Did This Study

Competition is a critical tool for achieving the best return on investment for taxpayers. In fiscal year 2011, the Department of Defense (DOD) obligated about \$375 billion through contracts; more than half that amount was for services. Agencies are required to award contracts on the basis of full and open competition, but are permitted to award noncompetitive contracts in certain situations.

The Senate Armed Services Committee report on the National Defense Authorization Act for Fiscal Year 2012 directed GAO to report on competition for DOD contracts and task orders for services. GAO examined (1) how competition rates for services compare to competition rates for products and trends in competition for services, (2) the reasons for noncompetitive contracts and task orders for services, and (3) steps DOD has taken to increase competition.

GAO reviewed federal procurement data for 2007 through 2011 and a non-generalizable sample of 111 justifications for noncompetitive awards, which were from different DOD components and for different types of services. GAO defines competition rates as the dollars obligated under competitive contracts and task orders as a percentage of all obligations. GAO focused on non-research and development (R&D) services to concentrate analysis on contracts not related to development of weapons systems. GAO reviewed DOD policies and competition reports, and prior GAO reports.

GAO is not making any new recommendations. DOD responded to a draft of this report with no comments.

View GAO-12-384. For more information, contact John Hutton at (202) 512-4841 or [huttonj@gao.gov](mailto:huttonj@gao.gov)

March 2012

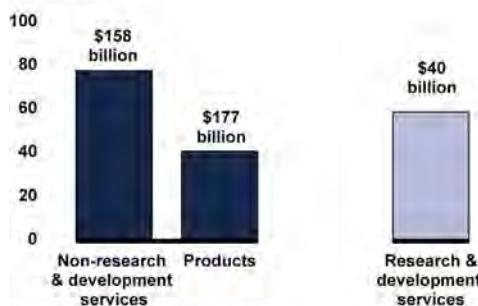
## DEFENSE CONTRACTING

### Competition for Services and Recent Initiatives to Increase Competitive Procurements

## What GAO Found

In fiscal year 2011, the competition rate for DOD's non-R&D services was almost twice the competition rate as that of products, and almost 20 percent higher than that of R&D services, as shown below.

DOD Competition Rates for All Fiscal Year 2011 Obligations  
Percentage



Source: GAO analysis of FPDS-NG data.

From fiscal year 2007 through 2011, competition rates for non-R&D services have been nearly 80 percent and have not changed significantly across DOD, but have declined at the Air Force, dropping from 75 percent to 59 percent. According to a DOD procurement policy official, the Air Force competition advocate is assessing the reasons for lower competition rates. When non-DOD agencies procured non-R&D services on behalf of DOD in fiscal year 2011, their average competition rate was 81 percent, slightly higher than the average rate of 78 percent for DOD's own contracting offices.

The majority of DOD noncompetitive obligations for non-R&D services in fiscal year 2011 were due to the contractor being the only responsible source for the procurement. The second most cited exception was "authorized by statute," for example, awards under the Small Business Administration's 8(a) business development program. Based on prior GAO work, a variety of factors can affect competition, including reliance on contractor expertise and data rights, the influence of program offices, and unanticipated events such as bid protests. GAO analysis of the justifications for noncompetitive contracts identified examples of these factors affecting competition for DOD procurements in fiscal year 2011.

Since 2009, the Office of Management and Budget (OMB) and DOD have undertaken initiatives related to competition, including actions to address some opportunities GAO previously identified. DOD has taken steps aimed at increasing competition, in particular "effective competition" which DOD defines as situations where more than one offer is received in response to a competitive solicitation. For instance, DOD has implemented requirements to provide additional response time to solicitations when only one offer is received for a solicitation that initially provided less than 30 days for receipt of proposals. Outside of recent efforts to increase competition, OMB and DOD have additional opportunities to address prior GAO recommendations—such as promoting the role of program officials in influencing competition and better understanding the circumstances leading to only one offer on competitive contracts.

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## Abbreviations

CICA	Competition in Contracting Act
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
IDIQ	indefinite delivery / indefinite quantity
J&A	justification and approval
OMB	Office of Management and Budget
R&D	research and development

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**United States Government Accountability Office  
Washington, DC 20548**

March 15, 2012

The Honorable Carl Levin  
Chairman  
The Honorable John McCain  
Ranking Member  
Committee on Armed Services  
United States Senate

The Honorable Howard P. "Buck" McKeon  
Chairman  
The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
House of Representatives

Competition is a cornerstone of the federal acquisition system and a critical tool for achieving the best possible return on investment for taxpayers. Competitive contracts can help save money, conserve scarce resources, improve contractor performance, curb fraud, and promote accountability. In fiscal year 2011, the Department of Defense (DOD) obligated about \$375 billion through contracts; more than half of that amount was for services. In recognizing the need to make more efficient use of resources, DOD's 2010 "Better Buying Power" initiative placed an emphasis on maximizing opportunities for competition in the acquisition of products and services.

While the Competition in Contracting Act (CICA) of 1984 generally requires federal agencies to award contracts using full and open competition, agencies are allowed to award contracts noncompetitively under certain circumstances. Generally, noncompetitive contracts must be supported by written justifications and approvals (J&A) that address the specific exception to full and open competition that is being applied to the procurement. In addition, federal agencies can establish indefinite delivery/indefinite quantity (IDIQ) contracts with one or more contractors and issue orders under these contracts. When more than one contractor is involved, agencies are generally required to provide all contractors a fair opportunity to be considered for each order above certain dollar thresholds; however, agencies can award noncompetitive orders under a process called an exception to the fair opportunity process—again with a documented justification. For purposes of this report, we consider use of the fair opportunity process to be competition. Finally, the General

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Services Administration (GSA), under its schedules program, awards IDIQ contracts to multiple vendors for commercially available goods and services, and federal agencies place orders under the contracts. When doing so noncompetitively, procuring agencies must justify the need to restrict the number of vendors considered, known as a limited sources justification and approval.

The Senate Armed Services Committee report on the National Defense Authorization Act for Fiscal Year 2012 expressed concerns that DOD may not be competing service contracts as much as it could. The Senate committee report directed us to report on competition for DOD contracts and task orders for services.<sup>1</sup> Accordingly, we examined (1) how competition rates for services compare to competition rates for products, and trends in competition for services; (2) the reasons for noncompetitive contracts and task orders for services; and (3) steps DOD has taken to increase competition for services.

To address these objectives, we identified through the Federal Procurement Data System-Next Generation (FPDS-NG) DOD obligations under competitive and noncompetitive contracts in fiscal years 2007 through 2011, the most recent data available at the time of our review.<sup>2</sup> We identified obligations to noncompetitive contracts primarily through the “extent competed” and “fair opportunity/limited sources” fields in FPDS-NG. These fields include contracts coded as not competed or not available for competition, and noncompetitive task or delivery orders. As a result, and for the purposes of this report, we defined noncompetitive obligations to include obligations through contracts that were awarded using the exceptions to full and open competition in Federal Acquisition Regulation (FAR) Subpart 6.3, and orders issued under multiple award IDIQ contracts under the exceptions to the fair opportunity process in

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<sup>1</sup> Task orders for services (and delivery orders for supplies) are issued under IDIQ contracts. IDIQ contracts do not procure or specify a firm quantity of supplies or services (other than a minimum or maximum) and provide for the issuance of orders during the contract period. FAR § 16.501-1.

<sup>2</sup> FPDS-NG is the government's procurement database. We assessed the reliability of FPDS-NG data by (1) performing electronic testing of required data elements, and (2) reviewing existing information about the data and the system that produced them. We determined that the data were sufficiently reliable for the purposes of this report.

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FAR 16.505(b) or under limited sources provisions for orders issued under GSA's schedules program in FAR Subpart 8.405-6.<sup>3</sup>

We calculated competition rates as the percentage of dollars obligated annually through competitive contracts and orders to dollars obligated through all contracts and orders. While we focused our analysis of FPDS-NG on non-research and development (R&D) services to concentrate our analysis on contracts not related to development of weapons systems, we assessed fiscal year 2011 competition rates for R&D services and compared them to competition rates for non-R&D services and for products. We also identified trends in competition rates for non-R&D services at DOD and its components from fiscal year 2007 through 2011. For the purposes of this report, we divided DOD into four components: Air Force, Army, Navy, and other defense agencies.<sup>4</sup> We also examined competition rates for the non-DOD organizations that obligated funds for services on DOD's behalf through the use of interagency contracting in fiscal year 2011. Interagency contracting allows an agency needing contracting services (the requesting agency) to obtain them from another agency (the assisting agency) by an assisted or a direct acquisition and, when used correctly, can offer improved efficiency in the procurement process. All competition rate information was based on our analysis of FPDS-NG data. We present the trend data in this report, but did not determine the reasons for any fluctuations in trends over time. We did not assess competition rates for contracts related to specific circumstances, such as contracts in support of contingency operations.

To gain an understanding of the reasons leading to noncompetitive awards, we reviewed a non-generalizable selection of 111 DOD J&A documents and exception to fair opportunity documents. We selected these documents to reflect the non-R&D service categories with the

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<sup>3</sup> For task orders subject to fair opportunity, generally the contracting officer must provide each contractor a fair opportunity to be considered for each order under multiple-award IDIQ contracts, with certain statutory exceptions which must be documented in writing. For task orders not subject to fair opportunity, including those on single award IDIQ contracts, the competition data for task orders in FPDS-NG is derived from the competition data for the underlying IDIQ contract.

<sup>4</sup> Other defense agencies data include obligations made by any DOD contracting office that is not part of the Air Force, Army, or Navy. These include, but are not limited to: Defense Logistics Agency, Defense Supply Center, Defense Contract Management Agency, Defense Information Technology Contracting Organization, Missile Defense Agency, TRICARE Management Activity, and Defense Threat Reduction Agency.

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highest DOD obligations as well as the J&As requiring the highest level of review within the department. We selected justifications that were posted to the FedBizOpps.gov website in fiscal year 2011 and also reviewed J&As provided by DOD components in response to our request for all J&As approved by senior procurement executives in fiscal year 2011.<sup>5</sup> Some of these documents were for a mix of products and services providing weapons system support. We did not evaluate the J&As for completeness or reasonableness or validate how they were coded in FPDS-NG.

To identify steps DOD has taken to increase competition, we reviewed recently issued GAO reports and previous interviews with DOD acquisition officials including component competition advocates. We also reviewed Office of Management and Budget (OMB) and DOD policies and guidance related to competition, and DOD competition reports for fiscal years 2009 and 2010.

A more detailed description of our scope and methodology is presented in appendix I. Appendix II contains additional information on competition rates for various categories of services and by DOD component. We conducted this performance audit from September 2011 to March 2012, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Federal agencies are generally required to use full and open competition to award contracts, with certain exceptions. This requirement was established through CICA, which required agencies to obtain full and open competition through the use of competitive procedures in their procurement activities unless otherwise authorized by law.<sup>6</sup> Using full

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<sup>5</sup> The FAR generally requires contracting officers to post justifications for noncompetitive procurements at FedBizOpps.gov. FAR §§ 6.305 and 16.505(b)(2). This site may be accessed via the Internet at <https://www.fbo.gov/>. The FAR requires justifications to be approved by DOD senior procurement executives when the total value of the acquisition is expected to exceed \$85.5 million.

<sup>6</sup> Pub. L. No. 98-369, § 2701.

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and open competition to award contracts means that all responsible sources—or prospective contractors that meet certain criteria—are permitted to submit proposals. Agencies are generally required to perform acquisition planning and conduct market research to promote and provide for, among other things, full and open competition. However, Congress, by enacting CICA, also recognized that there are situations that require or allow for contracts to be awarded noncompetitively—that is, without full and open competition.<sup>7</sup> Generally, noncompetitive contracts must be supported by written J&As that contain sufficient facts and rationale to justify the use of the specific exception to full and open competition that is being applied to the procurement. Examples of allowable exceptions include circumstances where the contractor is the only source capable of performing the requirement or where an urgent need precludes adequate time for competition. Justifications generally are required to be published on the FedBizOpps.gov website and must be approved at levels that vary according to the dollar value of the procurement. J&As may be made for an individual procurement or on a class basis for a group of related acquisitions.<sup>8</sup> Noncompetitive contracts are not permitted in situations in which the requiring agency has failed to adequately plan for the procurement or in which there are concerns related to availability of funding for the agency, such as funds expiring at the end of the year.

Although full and open competition is generally required, agencies can also competitively award contracts after limiting the pool of available contractors—a process called “full and open competition after exclusion of sources.” For example, agencies set aside procurements for small businesses. In these cases, agencies are required to set aside procurements for competition among qualified small businesses if there is

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<sup>7</sup> FAR Subpart 6.3 sets forth the circumstances in which a contract is allowed to be awarded without providing for full and open competition.

<sup>8</sup> Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken under the class J&A's authority is within the class J&A's scope and document the contract file for each contract action accordingly. The approval level for class justifications is determined by the estimated total value of the class. FAR § 6.304(c).

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a reasonable expectation that two or more responsible small businesses will compete for the work and offer fair market prices.<sup>9</sup>

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## Competitive Requirements for Indefinite Delivery / Indefinite Quantity Contracts

When agencies issue task orders under IDIQ contracts, they are required to follow different procedures than those for full and open competition. As established under the Federal Acquisition Streamlining Act (FASA) of 1994, IDIQ contracts can be single award (to one contractor) or multiple award (to more than one contractor through one solicitation), but FASA establishes a preference for multiple award contracts. Agencies are generally required to compete orders on multiple award contracts among all contract holders. However, agencies can award noncompetitive orders—through a process called an exception to a fair opportunity to be considered—for reasons similar to those used for awarding contracts without full and open competition, such as only one contractor being capable of providing the supplies or services needed, or for an urgent requirement.<sup>10</sup> As with noncompetitive contracts, the reasons for issuing task orders under multiple award IDIQ contracts under an exception to the fair opportunity process must generally be documented in writing and approved at levels that vary according to the dollar value of the procurement.<sup>11</sup>

GSA, under its schedules program, awards IDIQ contracts to multiple vendors for commercially available goods and services, and federal agencies place orders under the contracts. Ordering procedures under the schedules program vary according to the dollar value of the procurement. For example, to meet competition requirements for orders exceeding the micro-purchase threshold (\$3,000) but not exceeding the

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<sup>9</sup> See FAR § 19.502-2 (b), which requires that acquisitions over \$150,000 be set aside for small businesses if there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and that the award will be made at a fair market price.

<sup>10</sup> See FAR § 16.505(b)(2). Other reasons for allowing a noncompetitive task order are that the requirement is a logical follow-on, or the order is needed to meet a minimum guarantee.

<sup>11</sup> FAR §§ 16.505 (b)(2)(ii)(A)(B)(C). The FAR was revised in March 2011 to enhance competition for orders placed under multiple-award contracts, including GSA's schedules contracts, and to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Pub. L. No. 110-417. 76 Fed. Reg. 14542, Summary Presentation of final and interim rules, March 16, 2011.

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simplified acquisition threshold (\$150,000), agencies must survey or request quotes from at least three schedule contractors.<sup>12</sup> However, to meet competition requirements for proposed orders exceeding the simplified acquisition threshold, agencies must post a request for quotation on GSA's posting website or provide it to as many schedule contractors as practicable to reasonably ensure that agencies receive at least three quotes from contractors that can fulfill the requirement. Agencies must document in the file if fewer than three quotes are received from contractors capable of fulfilling the requirement.<sup>13</sup> For orders issued noncompetitively under the schedules program, the ordering agency must justify in writing—with specific content required by the FAR—the need to restrict competition and also obtain approval at the same dollar values and by the same officials as for contracts awarded without full and open competition.<sup>14</sup>

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## Competitive Procurements Where Only One Offer Is Received

Contracts that are awarded using competitive procedures but for which only one offer is received have recently gained attention as an area of concern.<sup>15</sup> OMB's Office of Federal Procurement Policy recently noted that competitions that yield only one offer in response to a solicitation deprive agencies of the ability to consider alternative solutions in a reasoned and structured manner. Under DOD's Better Buying Power policy, competitive procurements where only one offer to a solicitation was received even when publicized under full and open competition are termed as "ineffective competition." The Navy has identified the potential for cost savings when effective competition is achieved. Specifically, in 2010, the Navy conducted a commodity study on the acquisition of information technology services that identified cost savings when more than one offer was received. Currently, FPDS-NG distinguishes these contracts by recording how many offers were received on any procurement.

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<sup>12</sup> FAR § 8.405-1(c)(1).

<sup>13</sup> FAR § 8.405-1(d).

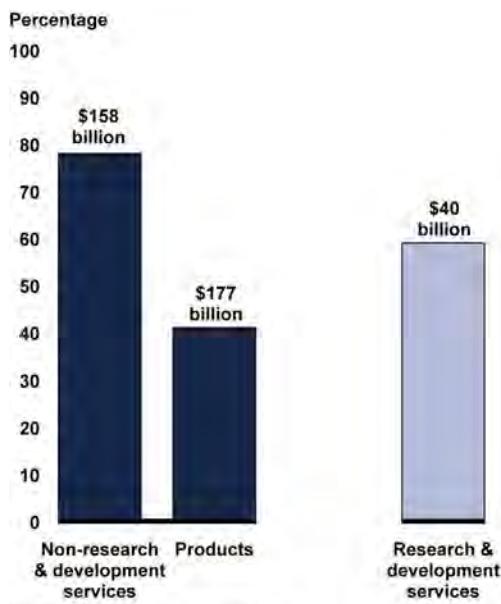
<sup>14</sup> FAR § 8.405-6, Limiting sources.

<sup>15</sup> We have reported on this issue, as well as on competition in general. GAO, *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, GAO-10-833 (Washington, D.C.: July 26, 2010).

## Competition Rates for Non-R&D Services Substantially Higher Than for Products with Little Change over Time

In fiscal year 2011, the competition rate for dollars obligated across DOD on contracts and task orders for non-R&D services was substantially higher than the competition rate for products—78 percent compared to 41 percent.<sup>16</sup> R&D services had a competition rate of 59 percent. (See figure 1.) DOD's overall competition rate for all services and products was 58 percent. According to a DOD procurement policy official, non-R&D services may be more commercial in nature than products, so there are more providers available to compete for these contracts. In contrast, the official said that opportunities for competition for R&D services are limited because they are generally provided by a limited number of vendors, such as university research laboratories, which each have their own area of specialized expertise.

**Figure 1: DOD Competition Rates for All Fiscal Year 2011 Obligations**

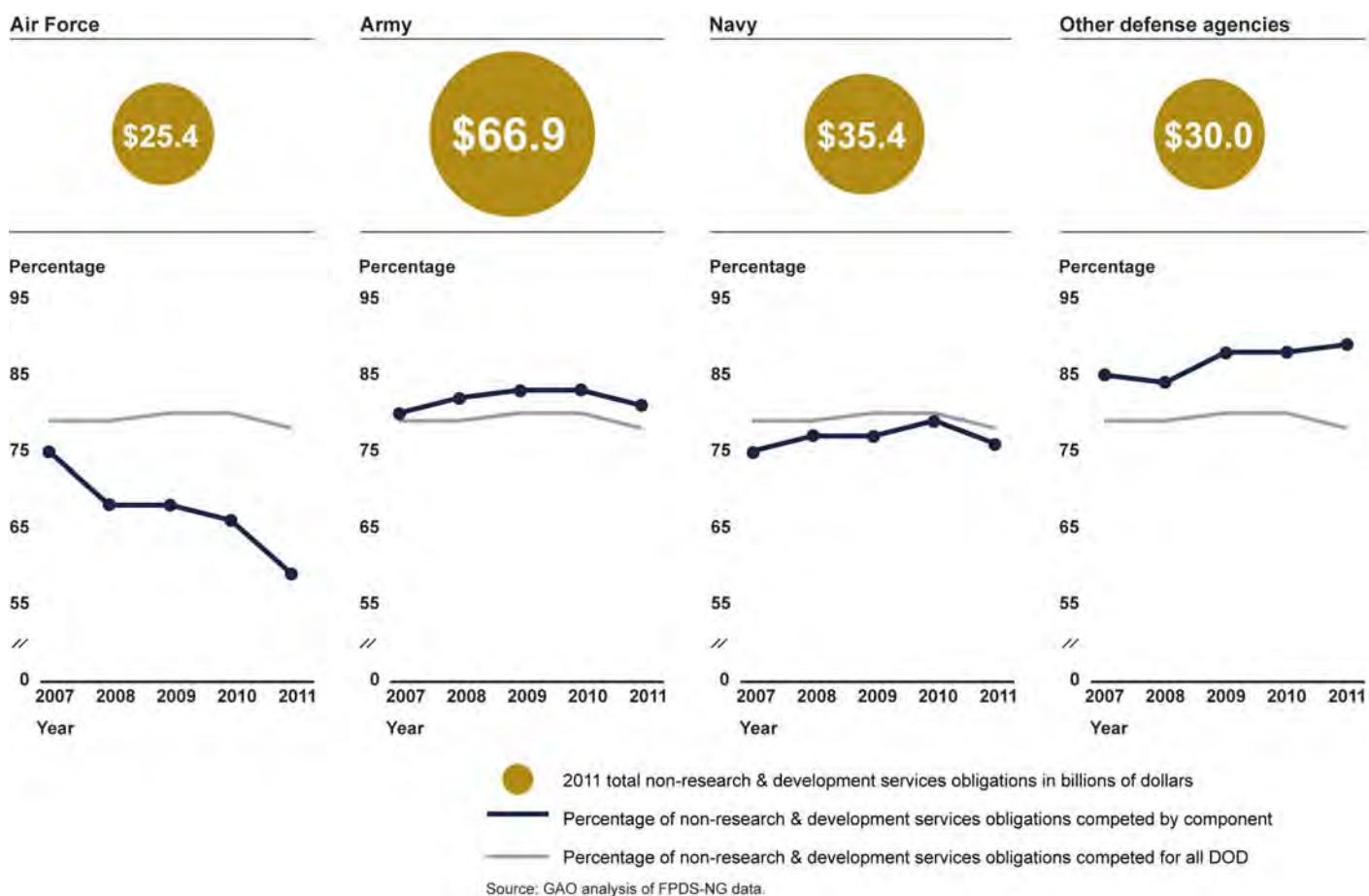


Source: GAO analysis of FPDS-NG data.

<sup>16</sup> For the purposes of this report, we calculated DOD competition rates as the percentage of dollars obligated annually through competitive contracts and task orders to dollars obligated through all contracts and task orders, including those awarded in prior years. This overall competition rate includes all contracts and task orders where competitive procedures were used regardless of the number of offers received. We provide additional comparisons of competition rates for different types of non-R&D services and major DOD components in appendix II.

From fiscal years 2007 through 2011, the rate at which non-R&D services were competed did not change significantly across DOD, the Army, or the Navy. Across DOD, competition rates went from 79 percent in 2007 to 78 percent in 2011. Among the major components, the Air Force had a significant decline, dropping from 75 percent to 59 percent. According to a DOD procurement policy official, the Air Force competition advocate is assessing the reasons for lower competition rates. Other defense agencies had a small increase in competition rates, from 85 percent to 89 percent. (See figure 2.)

**Figure 2: Competition Rates for All Obligations for Non-R&D Services from Fiscal Years 2007 through 2011**

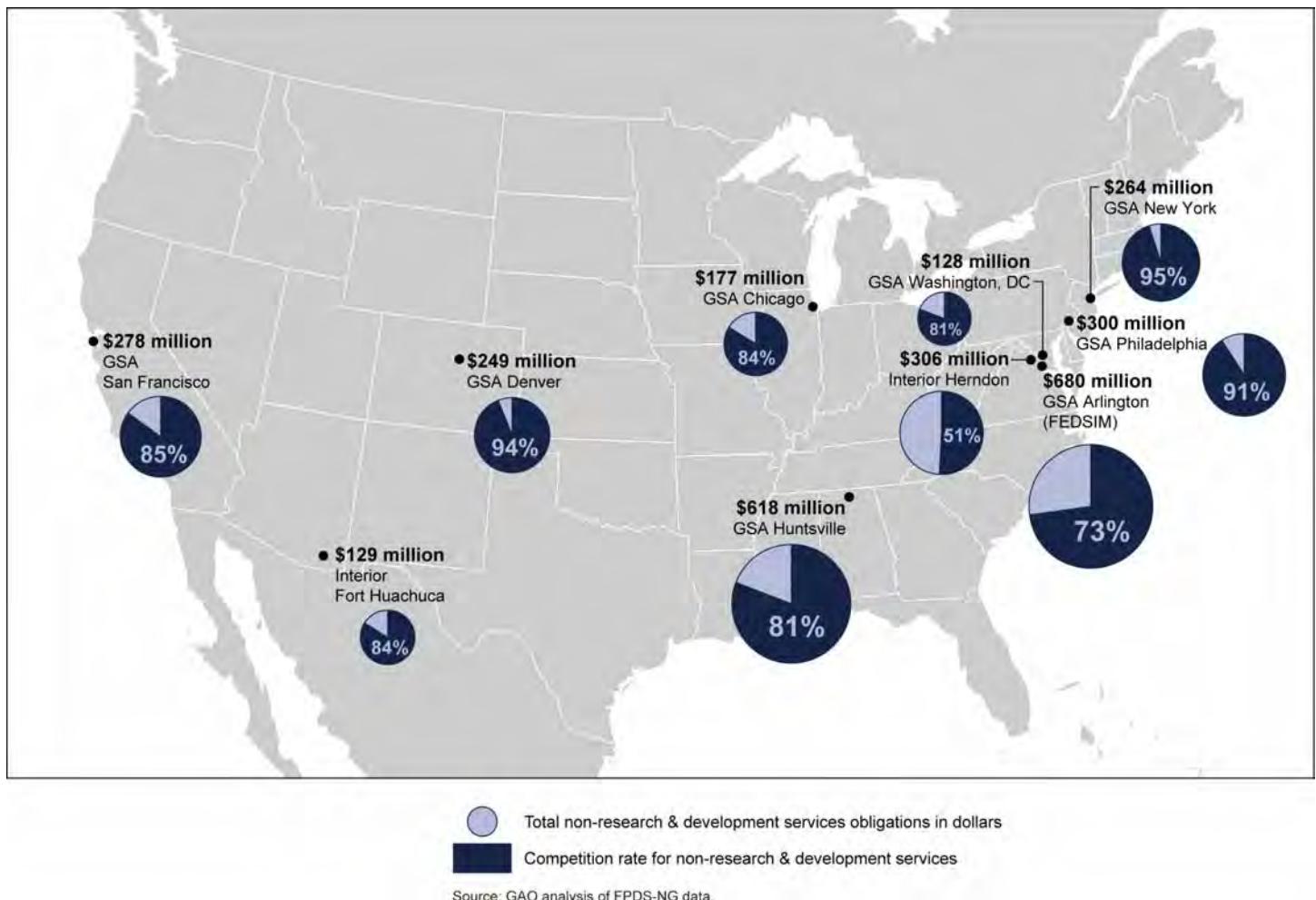


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Competition rates for obligations on only new contracts and orders for non-R&D services across DOD over the same 5-year period exhibited the same general trend as for obligations on all non-R&D services contracts and orders, with two main exceptions. The competition rate for new actions at the Navy declined, from 76 percent to 71 percent, and the competition rate at other defense agencies increased significantly, from 78 percent to 91 percent. In fiscal year 2011, almost half of obligations for non-R&D services were made on new contracts and task orders awarded in that year. The remaining obligations were under contracts and task orders that had been awarded in prior years.

We also examined competition rates for non-DOD agencies providing assisted acquisition services to DOD. These agencies are commonly referred to as assisting agencies. For example, in fiscal year 2011, Department of the Interior (Interior) and GSA contracting offices, among other agencies, obligated a total of \$3.8 billion in DOD funds for non-R&D services. While the assisting agencies had varying competition rates, their average competition rate was slightly higher than that of DOD's contracting offices—81 percent compared to 78 percent. However, one non-DOD contracting office within Interior, which was among the assisting agencies with the highest DOD obligations, had a substantially lower competition rate for non-R&D services—51 percent. (See figure 3.) A DOD procurement policy official stated that the competition advocates do not currently track competition rates by assisting agencies as part of their overall competition assessments.

**Figure 3: Fiscal Year 2011 Competition Rates for Top 10 Assisting Agencies**



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## **Majority of Noncompetitive Awards Coded as “Only One Responsible Source” and Competition Rates Were Affected by Several Key Factors**

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### **Majority of DOD Non-R&D Services Noncompetitive Obligations Were Coded under “Only One Responsible Source”**

Based on our analysis of FPDS-NG data, in fiscal year 2011 the majority of DOD’s noncompetitive non-R&D services contracts and task orders were coded under the “only one responsible source” category. In addition, based on our prior work, a variety of factors can affect competition, including reliance on contractor expertise and data rights, the influence of program offices on the acquisition process, and unanticipated events such as bid protests.

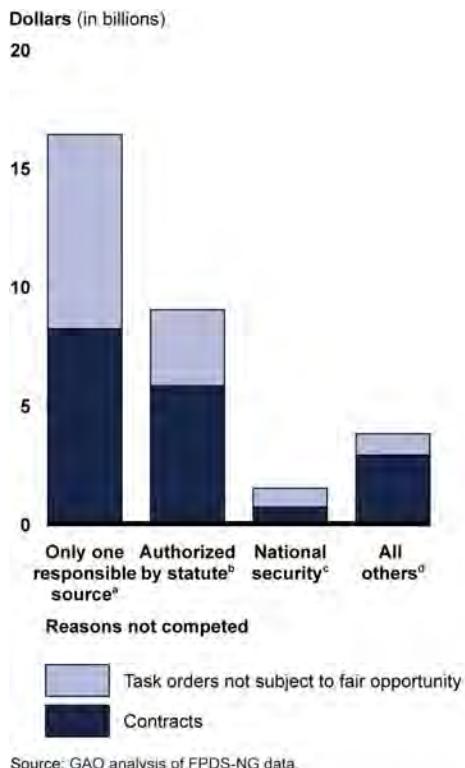
In fiscal year 2011, the majority of DOD’s non-R&D services obligations under noncompetitive contracts and task orders not coded as subject to fair opportunity were coded under the competition exception “only one responsible source” in FPDS-NG.<sup>17</sup> The second most cited exception was “authorized by statute.” Together, these two exceptions comprised more than 80 percent of all obligations on noncompetitive contract actions.<sup>18</sup> See figure 4 for obligations across competition exceptions for noncompetitive non-R&D services contracts and task orders not subject to fair opportunity.

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<sup>17</sup> Not all task orders are subject to fair opportunity, including those on single award IDIQ contracts. In these cases, the competition data for task orders in FPDS-NG is derived from the competition data for the underlying IDIQ contract. Most fiscal year 2011 DOD noncompeted non-R&D services obligations on task orders were not coded as subject to fair opportunity in FPDS-NG.

<sup>18</sup> We have previously reported about miscoding errors related to this FPDS-NG field. See [GAO-10-833](#). However, these two categories are so prominent above all others we have determined that the data are sufficiently reliable for the purpose of this analysis. Appendix I contains more detail.

**Figure 4: Competition Exceptions for Fiscal Year 2011 DOD Obligations on Noncompetitive Non-R&D Service Contracts and Task Orders**



Source: GAO analysis of FPDS-NG data.

Note: These noncompetitive obligations do not include instances where competitive procedures were used but only one offer was received.

<sup>a</sup>“Only one responsible source” includes contracts and orders placed on IDIQ contracts that cited the following categories in FPDS-NG: unique source; follow-on contract; patent or data rights; utilities; standardizations; only one source-other; and brand name description. FAR § 6.302-1.

<sup>b</sup>FAR § 6.302-5.

<sup>c</sup>FAR § 6.302-6.

<sup>d</sup>“All others” includes contracts and orders placed on IDIQ contracts that cited the following competition exceptions: urgency; industrial mobilization, engineering, developmental, or research capability, or expert services; international agreement; public interest, FAR §§ 6.302-2 through 6.302-4, and 6.302-7; and not competed using simplified acquisition procedures under FAR § 13.3.

Major weapon systems programs have cited the “only one responsible source” exception to justify not competing large contract actions in class J&As. Under a class J&A, one justification supports not competing consolidated product and service requirements across DOD activities and

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multiple programs. In our review of J&As, we identified several examples where DOD cited the “only one responsible source” exception, including:<sup>19</sup>

- The Air Force justified a \$200.7 million noncompetitive contract under a class J&A to a subcontractor of one of its long-standing incumbent contractors for communication equipment and support services for an aircraft system. Market research indicated that the subcontractor was the only source of the equipment and services, and by eliminating pass-through costs associated with subcontracting the Air Force could save up to \$66 million or 33 percent of the estimated contract value.
- The Army justified extending an \$8.3 million task order noncompetitively for training and support services for soldiers going into and returning from overseas deployment following a decision to change the location where the services would be required under a planned follow-on competitive procurement. The J&A noted that planning for the follow-on contract had started in December 2009, but in late October 2010 the contracting office learned that all required support services would be fully transferred to other Army locations by December 2011. According to the J&A, officials noted that it would not be advantageous to pursue full and open competition for a 1-year service contract.

Noncompetitive obligations categorized as “authorized by statute” include contracts that are authorized or required to be made through another agency or from a specified source, including awards under the HUBZone Act of 1997, the Veterans Benefit Act of 2003, and the Small Business Administration’s 8(a) business development program.<sup>20</sup> For example, the Defense Commissary Agency cited this exception for a noncompetitive contract for emergency repairs valued at \$308,759 to a service disabled veteran-owned small business. The agency urgently needed to upgrade its computer room air conditioning and noted that the contractor had performed similar work in the past with excellent results.

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<sup>19</sup> In each of the “only one responsible source” examples, J&As cited FAR § 6.302-1.

<sup>20</sup> FAR § 6.302-5. The HUBZone program, administered by the Small Business Administration, is meant to spur economic growth in historically underutilized business zones by helping qualified small businesses secure federal contracts. In addition, we recently reported on tribal 8(a) contracting, including noncompetitive contracts awarded to Alaska Native Corporations, Indian tribes, and Native Hawaiian Organizations. GAO, *Federal Contracting: Monitoring and Oversight of Tribal 8(a) Firms Need Attention*, GAO-12-84 (Washington, D.C.: Jan. 31, 2012).

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In addition, 5 percent of noncompetitive obligations on contracts and task orders not subject to fair opportunity were categorized under the “national security” exception, which is used when the disclosure of the agency’s needs would compromise national security. This exception, however, is not to be used merely because the acquisition is classified or because access to classified matter is necessary.<sup>21</sup>

Task orders issued under multiple award contracts and coded as subject to the fair opportunity process represented only 12 percent of noncompetitive non-R&D services obligations in fiscal year 2011.<sup>22</sup> Of the over \$4 billion obligated under noncompetitive non-R&D task orders that were subject to the fair opportunity process, over 80 percent were coded under two exceptions to the fair opportunity process in FPDS-NG. Specifically, “follow-on action following competitive initial action” was cited for 46 percent of the obligations and “only one source” was cited for 36 percent. Agencies can noncompetitively award a logical follow-on to an order already issued under an IDIQ contract if all awardees were given a fair opportunity to be considered for the original order.<sup>23</sup>

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## Several Key Factors Influence Competition for Service Contracts

In July 2010, we identified key factors affecting competition, including reliance on contractor expertise and proprietary data. Also, program officials can influence competition by expressing vendor preferences, planning acquisitions poorly, or specifying overly restrictive requirements.<sup>24</sup> Unanticipated events such as bid protests or unforeseen requirements with time frames that preclude competition can also impact competition.

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<sup>21</sup> We recently reported on the use of the national security exception to competition. See GAO, *Defense Contracting: Improved Policies and Tools Could Help Increase Competition on DOD’s National Security Exception Procurements*, GAO-12-263 (Washington, D.C.: Jan. 13, 2012).

<sup>22</sup> FAR § 16.505(b).

<sup>23</sup> FAR § 16.505(b)(2)(i)(C). According to Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information 216.505-70, a follow-on order is a new procurement placed with a particular contractor to continue or augment a specific program or service.

<sup>24</sup> GAO-10-833.

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### Reliance on Contractor Expertise and Proprietary Data Can Affect Competition

We have previously reported that DOD needs access to technical data related to its weapon systems in order to help control costs and maintain flexibility in the acquisition and sustainment of those weapon systems. Technical data can enable the government to complete maintenance work in-house, as well as to competitively award acquisition and sustainment contracts. For contracts pertaining to DOD weapons programs, which can involve products as well as support services, the lack of access to proprietary technical data and a heavy reliance on specific contractors for expertise limit, or even preclude the possibility of, competition.<sup>25</sup> Even when technical data are not an issue, the government may have little choice other than to rely on the contractors that were the original equipment manufacturers, and that, in some cases, designed and developed the weapon system.

In our review of selected fiscal year 2011 J&As, we identified many instances where DOD lacked either the expertise or the technical data necessary to conduct a full and open competition. Two examples, which were justified under the “only one responsible source” competition exception, are:

- The Navy approved a class J&A for noncompetitive contract actions valued at \$2.3 billion to acquire the next generation of aircraft along with supporting supplies and services. Officials noted that the contractor had been the sole designer, developer, and manufacturer of the system since 1964 and would not sell the government the technical data required to compete the acquisition.
- The Army justified a noncompetitive \$455.3 million contract to remanufacture helicopters because the Army lacked the technical data and expertise necessary to compete the requirement. According to the J&A, although a related contract from the late 1980s allowed the government to have technical data packages suitable for competition, the data was never obtained. According to the J&A, the contractor’s estimated cost for this data was nearly \$4 billion. In approving the J&A, the senior procurement official noted, “I hope that all contracting activities can persistently monitor how to be more

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<sup>25</sup> Technical data is recorded information used to define a design and to produce, support, maintain, or operate a system. GAO, *Defense Acquisition: DOD Should Clarify Requirements for Assessing and Documenting Technical-Data Needs*, GAO-11-469 (Washington, D.C.: May 11, 2011).

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## Program Offices Can Influence Competition through Vendor Preference, Poor Acquisition Planning, or Overly Restrictive Requirements

competitive, despite the noncompetitive positions we have gotten ourselves into over the years.”

In 2010, we reported that program officials play a significant role in the contracting process, particularly in developing requirements and interfacing with contractors. Program officials may put pressure on the contracting process to award contracts to a specific vendor without competition. Contracting officials have said that a program office may be comfortable with the incumbent contractor because a relationship had developed between the program office and the contractor, who understands the program requirements. Program officials pressure the contracting office to remain with that contractor, thus inhibiting competition. In one J&A we reviewed, the Office of Military Commissions expressed a strong preference for the incumbent contractor. Specifically, the office justified noncompetitively awarding a contract extension valued at up to \$15 million for courtroom services at Guantanamo Bay, under the competition exception for expert services.<sup>26</sup> According to the J&A, since 2007, the contractor representatives had become fully integrated members of the litigation teams. These services included handling and securing sensitive documents and protecting sensitive information in the courtroom. Given that the government did not expect to need these services for longer than a year, the government did not want to risk delays and inefficiencies in the trial process by bringing on a new contractor.

In 2010, we also reported that, according to contracting officials, program officials are often insufficiently aware of the amount of time needed to complete acquisition planning, including performing market research, properly defining requirements, and allowing contractors time to respond to requests for proposals, which may hinder opportunities to increase competition. In 2011, we reported that program officials at civilian agencies may not know how long these key steps can take, and we have recommended that agencies establish time frames for when program officials should begin acquisition planning.<sup>27</sup> Similarly, in one DOD J&A we reviewed, the Army justified awarding an \$11.2 million noncompetitive bridge contract for mission support services at Ft. Bliss, Texas under the “only one responsible source” competition exception. Bridge contracts are

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<sup>26</sup> This J&A cited FAR § 6.302-3.

<sup>27</sup> GAO, *Acquisition Planning: Opportunities to Build Strong Foundations for Better Services Contracts*, GAO-11-672 (Washington, D.C.: Aug. 9, 2011).

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typically short-term to avoid a lapse in service while the award of a follow-on contract is being planned or an awarded contract is being implemented. According to the J&A, this bridge contract was necessary after unexpected delays in the acquisition planning process for a planned competitive follow-on task order. The delays were due to, among other things, the program office changing managers multiple times and difficulties writing requirements that met the contracting officer's standards, conflicting end-of-year responsibilities for contracting office staff, and the senior procurement officials taking 6 months to approve the acquisition strategy.

We have also previously reported that the government's requirements can influence the number of offers received under competitive solicitations if these requirements are written too restrictively. Contracting officials explained that it is challenging to identify program office requirements that are written so restrictively that they are geared toward the incumbent. These officials said that their technical backgrounds and having the assistance of technical staff in evaluating the requirements can help them determine whether the requirements can be broadened. They noted that if they lack technical expertise in the specific area, it is more difficult to question whether a statement of work is written too restrictively.

#### Unanticipated Events Have Resulted in Noncompetitively Awarded Contracts

Finally, we identified instances when unanticipated events stalled planned competition, leading to bridge contracts. Unforeseen events that can lead to bridge contracts include unexpected expansion of requirements and competitors filing bid protests of competitive follow-on contract awards. Of 111 J&As we reviewed, 18 were bridge contracts valued at a total of over \$9 billion. Five of these bridge contracts were due to bid protests. Examples of bridge contracts due to unanticipated events include:

- DOD's TRICARE program justified negotiating noncompetitive options that extended the performance on each of the two existing TRICARE contracts for 1 year valued at \$6.6 billion under the "only one responsible source" competition exception to provide managed care support services.<sup>28</sup> According to the J&A, these options were necessary after unexpected delays in the acquisition process were triggered by protests at the agency level and to GAO of the prior

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<sup>28</sup> TRICARE is the health care program serving active duty service members, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

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competitive awards for these services. The extensions allowed TRICARE to compete a large follow-on contract while implementing recommendations stemming from the sustained GAO protest without disrupting the delivery of health care services to TRICARE beneficiaries.

- The U.S. Army Corps of Engineers justified a \$22 million noncompetitive modification of an existing contract under the “only one responsible source” competition exception after learning of a major construction requirement in Afghanistan with little notice. As a result, current plans for prison construction already under way were unexpectedly expanded and had to be completed within a short time frame. According to the J&A, the only way to meet this time frame was to not compete a new contract. Officials noted that using the existing contract could save 30 days or more “off an almost unachievable schedule, making every single day saved absolutely critical.”

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## OMB and DOD Are Taking Steps to Increase Competition

Since 2009, OMB and DOD have implemented efficiency initiatives related to competition—including actions to address some opportunities we previously identified. In July 2010, we reported that recent congressional actions to strengthen competition opportunities in major defense programs may take some time to demonstrate results.

Additionally, we reported that OMB’s efforts to reduce agencies’ use of high-risk contract types may help agencies refocus and reenergize efforts to improve competition. Despite these actions, we identified additional opportunities to increase competition and we recommended that OMB take several actions—including emphasizing the role of program officials in influencing competition, taking steps to better understand the circumstances leading to only one offer on competitive contracts, and examining how competition advocates are appointed.

OMB has taken steps to increase efficiency and enhance competition in government contracting, including responding to previous GAO recommendations and issuing guidance to DOD among other agencies. Recent initiatives include:

- In July 2009, OMB implemented an initiative to reduce obligations through new contracts in fiscal year 2010 by 10 percent in certain high-risk categories—including noncompetitive contracts and

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competitive procurements that only receive one offer. We recently reported on challenges with this initiative.<sup>29</sup>

- In October 2009, OMB established initial guidelines to help chief acquisition officers and senior procurement executives evaluate the effectiveness of their agencies' competition practices and processes for selecting contract types.<sup>30</sup>
- The Office of Federal Procurement Policy released new guidance with respect to competition in establishing GSA schedule blanket purchase agreements in December 2009 in response to our recommendation that OMB take greater advantage of the opportunities that competition provides under schedule blanket purchase agreements.<sup>31</sup>

In addition, DOD has taken several actions aimed at increasing competition in response to Presidential and congressional actions:

- In June 2010, DOD announced its "Better Buying Power" initiative and issued implementing guidance in September 2010, which outlines a series of actions and directives to promote competition including:

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<sup>29</sup> GAO, *Federal Contracting: OMB's Acquisition Savings Initiative Had Results, but Improvements Needed*, [GAO-12-57](#) (Washington, D.C.: Nov. 15, 2011).

<sup>30</sup> In March 2009, President Obama directed OMB, in collaboration with certain agency heads and others to develop governmentwide guidance to, among other things, assist agencies in identifying contracts that are wasteful or inefficient and to formulate appropriate corrective action in a timely manner.

<sup>31</sup> GAO, *Contract Management: Agencies Are Not Maximizing Opportunities for Competition or Savings under Blanket Purchase Agreements despite Significant Increase in Usage*, [GAO-09-792](#) (Washington, D.C.: Sept. 9, 2009). In March 2011, the FAR Council issued an interim rule (effective May 16, 2011), amending the FAR to implement section 863 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417. The interim rule establishes enhanced competition requirements for placing orders under multiple-award contracts, including schedule contracts, and competition requirements for the establishment and placement of orders under schedule blanket purchase agreements. It also restricts the circumstances when blanket purchase agreements may be established based on a limited-source justification.

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- Pursuing open systems architecture and establishing rules for the acquisition of technical data rights;<sup>32</sup>
  - Seeking opportunities to increase the role of small businesses in defense marketplace competition and opportunities to compete multiple award IDIQ service contracts among small businesses; and
  - Presenting a competitive strategy at each program milestone for defense acquisition programs.
  - DOD has put particular emphasis on increasing “effective competition”—when more than one offer is received under a competitive solicitation—and has issued enhanced guidance for situations when competitive procedures are used but only one offer is received. Specifically, in November 2010 DOD issued a memorandum that requires contracting officers to provide additional time for contractors to respond to solicitations when only one offer is received, if less than 30 days was provided for the receipt of proposals under the original solicitation. In addition, if a solicitation allowed at least 30 days for receipt of offers and only one offer was received, the contracting officer must determine prices to be fair and reasonable through price or cost analysis or enter negotiations with the offeror.<sup>33</sup>
  - In addition, in July 2010, in response to our recommendations and as part of the Better Buying Power initiative, the Chairman of DOD’s Panel on Contracting Integrity established a new subcommittee tasked with examining improvements for

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<sup>32</sup> DOD published a final rule in September 2010 (DFARS § 207.106 (S-72)) amending the DFARS to implement § 202 of the Weapon Systems Acquisition Reform Act of 2009, Pub. L. No. 111-23 requiring, among other things, that acquisition plans for major defense acquisition programs include measures to ensure competition or the option of competition throughout the program life cycle; the rule stated one way of ensuring competition was through the acquisition of complete technical data packages. 75 Fed. Reg. 54524, Final rule, Sept. 8, 2010. DFARS Case 2009-D031 is an interim rule amending the DFARS to implement section 821 of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84 (2009), which authorizes certain types of government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a nondisclosure agreement having certain restrictions and remedies. 76 Fed. Reg. 11363, Interim rule, March 2, 2011. We previously recommended that DOD update policies that clarify requirements for documenting long-term technical-data requirements in weapons system program acquisition strategies and acquisition plans. [GAO-11-469](#).

<sup>33</sup> In July 2011, DOD proposed an amendment, which has not yet been made final, to the DFARS incorporating this requirement. 76 Fed. Reg. 44293, (proposed July 25, 2011).

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competitive opportunities and ways to be more effective at reducing single source buys. According to a DOD procurement policy official, the subcommittee is in the process of reviewing and responding to comments on the proposed rule on competitive procurements with only one offer, which is expected to be finalized in late spring 2012.

- DOD has also taken actions to enhance the competition advocate role, such as requiring each component or agency competition advocate to develop a plan to improve the overall rate of competition by at least two percent per year, and the rate of “effective competition” by at least 10 percent per year. DOD also holds quarterly meetings where competition advocates from the military services and other DOD agencies review the progress toward meeting competition procurement goals and discuss challenges and best practices. In December 2011, DOD issued a department-wide memorandum stating that DOD did not meet its fiscal year 2011 competition goals under the Better Buying Power initiative. DOD’s competition advocate stated that the department is paying too much for products and services and that competition is the key to driving down prices. He urged the component competition advocates to continue to identify shortcomings in competitive procedures and to communicate new ideas with each other on how to implement and improve competition. The memorandum also outlines fiscal year 2012 competition goals for DOD overall as well as for individual departments and components. DOD does not establish separate goals for products and services. The fiscal year 2012 goal for DOD overall (60 percent) is lower than the fiscal year 2011 goal (62.8 percent). According to a DOD procurement policy official, competition goals for fiscal year 2012 were established based on actual competition rates over the past few years.

During our previous work, DOD officials reported they have taken additional steps at the component level to enhance competition—such as efforts to educate and hold program officials accountable and additional review of individual contract actions under class J&As.

- In July 2010, we reported that the Navy has made competition training mandatory for personnel engaged in the acquisition process, including program managers, program executive officers and logistics personnel. In addition, in 2009 a senior Navy official told us that the Navy is following up with program managers who previously submitted J&As but stated that the requirement would be competed the next year to see if program managers are actually competing these requirements in the future.

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- In January 2012, we reported that the Air Force revised its process for a recently approved national security class justification for an intelligence, surveillance, and reconnaissance program office, requiring individual contract actions over \$85.5 million to be submitted to the Air Force senior procurement executive for expedited review. According to an Air Force General Counsel official, the Air Force has not yet determined what type of documentation will be required as part of that review, but it believes the increased review may identify additional opportunities for competition. We recommended that DOD evaluate the Air Force's new review process for national security exception actions under class justifications and implement a similar process across the department if it is found beneficial; DOD agreed with this recommendation.<sup>34</sup>

In addition to the recent actions DOD has taken, in July 2010, we identified other opportunities to increase competition across the federal government. These include emphasizing the role of program officials in influencing competition, better understanding the circumstances leading to only one offer on competitive contracts, and examining how competition advocates are appointed. We continue to track the agencies' progress in implementing these recommendations.

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## Agency Comments

We provided a draft of this report to DOD and the department responded that it had no comments.

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We are sending copies of this report to interested congressional committees and the Secretary of Defense. This report will also be available at no charge on GAO's website at <http://www.gao.gov>.

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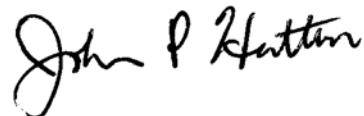
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<sup>34</sup> [GAO-12-263](#).

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Affairs may be found on the last page of this report. Staff acknowledgments are provided in appendix III.



John P. Hutton  
Director  
Acquisition and Sourcing Management

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# Appendix I: Objectives, Scope, and Methodology

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The objectives for this review were to examine (1) how competition for non-research and development (R&D) services compares to competition for products, and trends in competition for non-R&D services at the Department of Defense (DOD); (2) the reasons for noncompetitive contracts and task orders for services; and (3) steps DOD has taken to increase competition for services.

To address these objectives, we identified through the Federal Procurement Data System-Next Generation (FPDS-NG) DOD obligations under competitive and noncompetitive contracts in fiscal years 2007 through 2011, the most recent data available when we conducted our review.<sup>1</sup> For competitive contract actions, we included contracts and orders coded as “full and open competition,” “full and open after exclusion of sources,” “competitive delivery order,” and “competed under simplified acquisition procedures” as well as orders coded as subject to fair opportunity and as “fair opportunity given.” For noncompetitive contract actions, we included contracts and orders coded as “not competed,” “not available for competition,” “not competed under simplified acquisition procedures,” “follow-on to competed action,” and “non-competitive delivery order” as well as orders coded as subject to fair opportunity and under an exception to fair opportunity, including “urgency,” “only one source,” “minimum guarantee,” “follow-on action following competitive initial action,” and “other statutory authority.”<sup>2</sup> In addition, we identified fiscal year 2011 obligations under contracts where more than one offer had been received. We calculated competition rates as the percentage of obligations on competitive contracts and orders over all obligations on contracts and orders. We focused our review on non-research and development (R&D) services to concentrate our analysis on contracts not related to development of weapons systems, but conducted limited analysis to understand competition rates for R&D services as compared to non-R&D services and to products, in fiscal year 2011. We also identified trends in competition rates for non-R&D services at DOD components from fiscal years 2007 through 2011. We assessed

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<sup>1</sup> FPDS-NG is the government’s procurement database. We assessed the reliability of FPDS-NG data by (1) performing electronic testing of required data elements, and (2) reviewing existing information about the data and the system that produced them. We determined that the data were sufficiently reliable for the purposes of this report.

<sup>2</sup> We have previously reported on miscoding errors related to these fields. However, system-wide changes were made to FPDS-NG in October 2009 that should have mitigated these errors for the time period we reviewed. See GAO-10-833.

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competition rates across the 23 non-R&D service categories in FPDS-NG as well as across DOD and non-DOD contracting organizations (those organizations that obligated funds for services on DOD's behalf in fiscal year 2011).

We also examined the reasons cited in FPDS-NG for not competing DOD contracts and orders for services in fiscal year 2011. To do so, we selected and reviewed a non-generalizable sample of 111 justification and approval (J&A) and exception to fair opportunity documents to identify what circumstances led to the award of noncompetitive contracts and orders. While agencies are generally required to post J&As to the FedBizOpps.gov website, we did not assess whether the available data represented the full universe. We used a non-generalizable sample to provide illustrative examples of J&As, which was an appropriate approach to meet our reporting objective. The J&A documents we reviewed included:

- A selection of 77 documents provided by DOD components in response to our request for all justification and approval documents approved by the senior procurement executives in fiscal year 2011.<sup>3</sup> Some of these documents were for a mix of products and services providing weapons system support.
- A selection of 34 DOD J&As posted on the FedBizOpps.gov website. We selected these to obtain a mix of J&As from: the non-R&D service categories with the highest obligations (Maintenance, Repair, and Rebuilding of Equipment, Professional, Administrative and Management Support, and Construction of Structures and Facilities); each major DOD component (Air Force, Army, Navy, and other Defense agencies); and approvals at various points throughout fiscal year 2011.

In addition, we reviewed previous GAO reports, Office of Management and Budget and DOD policies and guidance, and DOD competition reports for fiscal years 2009 and 2010 to identify reasons for not competing contracts as well as actions that have been taken to improve competition at DOD. We also reviewed recent GAO interviews with DOD officials to identify barriers to competition as well as actions underway or planned for the future to improve competition. Interviews were conducted

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<sup>3</sup> The Federal Acquisition Regulation requires J&As to be approved by DOD senior procurement executives when the total value of the acquisition is expected to exceed \$85.5 million.

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as part of previous work related to government-wide competition, national security competition exception, and acquisition planning.<sup>4</sup>

We conducted this performance audit from September 2011 to March 2012, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>4</sup> See GAO-10-833, GAO-12-263, and GAO-11-672.

# Appendix II: Fiscal Year 2011 DOD Competition Rates by Service Category and Component

In fiscal year 2011, competition rates varied significantly among the 23 non-R&D service categories in FPDS-NG—from 43 to 97 percent. Competition rates also varied among the three service categories with the highest obligations, which together made up over half of all non-R&D services obligations. See table 1.

**Table 1: DOD Competition Rates for Non-R&D Service Categories in Fiscal Year 2011**

Service Category	Competition Rate	% of Total Fiscal Year 2011 non-R&D Services Obligations
Purchase of Structures & Facilities	43%	0%
Technical Representative	53%	1%
Quality Control, Testing & Inspection	61%	0%
Photographic, Mapping, Printing & Publishing	63%	0%
Modification of Equipment	63%	0%
Installation of Equipment	64%	1%
Special Studies	68%	2%
Maintenance, Repair & Rebuilding of Equipment	68%	12%
Utilities and Housekeeping	69%	6%
Educational & Training	69%	1%
ADP & Telecommunication	70%	9%
Salvage Equipment	75%	0%
Operation of Government-Owned Facilities	75%	2%
Lease or Rental of Equipment	75%	0%
Support Services (Professional, Administrative, Management)	76%	30%
Maintenance, Repair or Alteration of Real Property	76%	6%
Social Services	79%	0%
Natural Resources Management	83%	1%
Lease or Rental of Facilities	85%	0%
Medical Services	87%	9%
Architect & Engineering	90%	2%
Construction of Structures & Facilities	90%	12%
Transportation, Travel & Relocation Services	97%	6%
<b>Total</b>	<b>78%</b>	<b>100%</b>

Source: GAO analysis of FPDS-NG data.

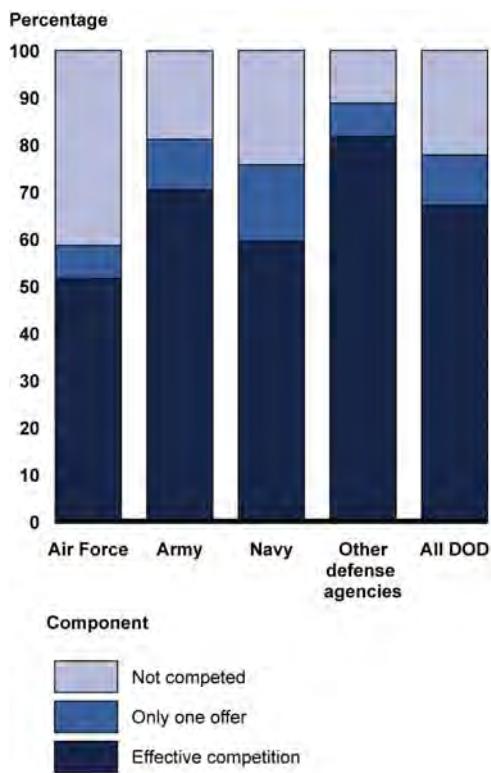
Note: Service categories where the percent of obligations is zero had less than 0.5 percent of total DOD non-R&D services obligations in fiscal year 2011.

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In fiscal year 2011, the major DOD components had varying competition rates for non-R&D services. The Air Force had the lowest overall competition rate (59 percent) while other defense agencies had the highest (89 percent). Effective competition—a subset of overall competition which DOD defines as competed actions that received more than one offer in response to a solicitation—rates also varied across the major components (52 percent at the Air Force to 82 percent at other defense agencies). The Navy had the highest percentage of competed actions with only one offer (16 percent). See figure 5 for competition percentages at each major DOD component.

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**Figure 5: Competition Rates by DOD Component for Non-R&D services in Fiscal Year 2011**



Source: GAO analysis of FPDS-NG data.

# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

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## Staff Acknowledgments

In addition to the contact names above, Michele Mackin, Acting Director; Alexandra Dew Silva; Peter Anderson; Georgeann Higgins; Julia Kennon; Jean McSween; Cary Russell; Kenneth Patton; Sylvia Schatz; Roxanna Sun; and Andrea Yohe made key contributions to this report.

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